

Summary of the Office Action

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Hiroi* (US Re 36,923). Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Oussani* (US 6,216,935). Claims 1, 3, 6, 7, and 9-11 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants wish to thank the Examiner for the indication that claims 5-11 are allowable.

Summary of the Response to the Office Action

Applicants have amended claims 1, 3, 5-7, and 9-11. Accordingly, claims 1-11 are pending for consideration.

The Rejection Under 35 U.S.C. § 112

Claims 1, 3, 6-7, and 9-11 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite.

Applicants have amended claims 1, 3, 5-7, and 9-11 as well as claim 5 in accordance with the comments of the Examiner. Accordingly, Applicants respectfully submit that the claims comply with the requirements of U.S.C. § 112, second paragraph, and that the rejection under U.S.C. § 112, second paragraph, should be withdrawn. However, Applicants respectfully submit that the informalities noted in the Office Action do not rise to the level of indefiniteness. Moreover, Applicants respectfully submit that the amendments do not narrow the intended scope of the claims. Therefore, Applicants do not intend to acquiesce any subject matter by these amendments.

The Rejection Under 35 U.S.C. § 102(b)

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Hiroi* (US Re 36,923). Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Oussani* (US 6,216,935). Applicants respectfully traverse these rejections for at least the following reasons.

Independent claim 1, as previously presented or as amended, recites “a detection mechanism that contacts with a rotary member provided in the drive mechanism, the detection mechanism detecting a rotation cumulative amount of the drive mechanism, and an indicator mechanism for indicating the rotation cumulative amount detected by the detection mechanism.” In contrast to the Applicants’ claimed invention, a microswitch 12, a drive shaft 6, and a sensor cam 13 of *Hiroi*, which is alleged to be a detection mechanism in the Office Action, detects only the level of the load of the stapling device during a stapling operation. However, in claim 1, the detection mechanism detects the rotation cumulative amount. Applicants respectfully assert that *Hiroi* is completely silent as to the function detecting the rotation cumulative amount. Further, in contrast to the Applicants’ claimed invention, the display 303 of *Hiroi*, which is alleged to be an indicator mechanism in the Office Action, indicates only the malfunction or overload of the stapler. However, in claim 1, the indicating means indicates a rotation cumulative amount detected by the detection mechanism. Applicants respectfully assert that *Hiroi* is completely silent as to the function indicating the rotation cumulative amount detected by the detection mechanism.

Also, in contrast to the Applicants' claimed invention, a reference numeral 60 and a shaft 64, which is alleged to be a detection mechanism in the Office Action, detects only the thickness of the work piece. However, in claim 1, the detection mechanism detects the rotation cumulative amount. Applicants respectfully assert that *Oussani* is completely silent as to the function detecting the rotation cumulative amount. Further, in contrast to the Applicants' claimed invention, the offset lever arm 72, alleged to be the indicator mechanism of *Oussani* indicates only the thickness of the work piece to be stapled. Again, Applicants respectfully assert that *Oussani* is completely silent as to the function indicating the rotation cumulative amount detected by the detection mechanism.

For at least the above reasons, Applicants respectfully assert that claim 1 is neither taught nor suggested by the applied prior art references, whether taken alone or in combination. As pointed out in MPEP § 2131, "[to] anticipate a claim, the reference must teach every element of the claim." Thus, Applicants respectfully assert that the rejection under 35 U.S.C. § 102(b) should be withdrawn because neither *Hiroi* nor *Oussani* does not teach or suggest each feature of claim 1, and hence dependent claims 2-11.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and the timely allowance of the pending claims. Should the Examiner believe that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative to expedite prosecution.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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